No. 06-1594

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# In The Supreme Court of the United States

**TAYLOR AYES, WILLIAM P. CUTSHALL, FRANK A. RIBAR, EDWARD C. SMITH, JAMES F. MARTIN, and WILLIAM C. TERRIO,**

*Petitioners,*

v.

**UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,**

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

## SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NORTH CAROLINA**
**WESTERN DIVISION**

**[ENTERED: October 7, 2005]**

No. 5:04-CV-904-BR(3)

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| TAYLOR AYES, WILLIAM P. CUTSHALL, FRANK A RIBAR, EDWARD C. SMITH, JAMES F. MARTIN, and WILLIAM C. TERRIO | ) | |
| Plaintiffs, | ) | |
| v. | ) | ORDER |
| UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, | ) | |
| Defendant. | ) | |

Defendant's motion to dismiss, or alternatively for summary judgment, and plaintiffs' motion for summary judgment are before the court.

On 30 November 2004, plaintiffs filed a complaint alleging violations of their rights under 11 U.S.C. § 525(a), the anti-discrimination provision of the bankruptcy code, and 38 U.S.C. §§ 3701, *et seq.*, which pertains to a loan guaranty program available to veterans. On 10 March 2005, in lieu of an answer, defendant submitted a motion to dismiss, or, alternatively, for summary judgment, with supporting memorandum. Plaintiffs submitted their own motion for summary judgment along with a memorandum in support of that motion and in response to defendant's motion for summary judgment on 11 April 2005. Defendant filed a

combined response to plaintiffs' motion and reply to plaintiffs' response to its own motion on 13 May 2005. Plaintiffs filed a reply on 9 June 2005, and the motions are ripe for review.

**Facts**

Plaintiffs are six veterans[1] who, after receiving discharges in bankruptcy under Chapter 7 or 11, were "denied reinstatement of their full loan guaranty entitlement[s] under 38 U.S.C. §§ 3701 *et seq.*" by the United States Department of Veterans Affairs (the VA or defendant).[2] (Compl. ¶ 1.) Specifically, plaintiffs allege that they each attempted to secure financing for the purchase or construction of homes from various private lenders after having obtained discharges in bankruptcy and that they were denied loans. (Compl. ¶¶ 23, 27, 31, 56, 63.) Plaintiffs assert that the various private lending institutions denied their loan applications because the VA refused to provide Certificates of Eligibility reflecting "full" loan guaranty entitlements.[3] The VA refused to extend these veterans

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[1] While plaintiffs purport to bring their suit as a class action on behalf of all similarly situated veterans, plaintiffs have not been certified as a class, and the class certification issue is not before the court at this stage in the proceedings.

[2] Plaintiffs do not provide in their complaint details of their original home loan guaranties from the United States Department of Veterans Affairs (VA). They do not, however, deny that they received such guarantees as permitted by the statute the first time they applied. Plaintiffs also state that their debts were discharged in bankruptcy proceedings. (Compl. ¶¶ 22, 30, 39, 48, 54, 61.) Plaintiffs do not specifically allege that they had obligations to the VA that were discharged in bankruptcy, but they do not deny that the VA sustained losses on their accounts.

[3] The court notes that the VA offered three of the named plaintiffs guaranties reduced by the amount of the loss sustained by the VA on behalf of the veteran at issue. (Compl. ¶¶ 24, 33, 42.)

"full" guaranties because the VA had suffered losses on previous loan guaranties made on behalf of those veterans that had not been paid in full. Plaintiffs assert that the VA's decision not to restore their "full" loan guaranty entitlements following discharge of their debts in bankruptcy constitutes unlawful discrimination in violation of 11 U.S.C. § 525(a).

**Standard of Review**

For purposes of a motion to dismiss pursuant to Rule 12(b)(6), the court construes the complaint in the light most favorable to the non-moving party and takes as true the allegations therein. As stated by the Supreme Court:

> In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Conley v. Gibson, 355 U.S. 41, 45-46 (1957). "[T]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim." Revene v. Charles County Com'rs, 882 F.2d 870, 872 (4th Cir. 1989).

To resolve defendant's motion to dismiss, the court must determine whether section § 525(a) applies to the government loan guaranty program described at 38 U.S.C. §§ 3701 *et seq.* If it does not, defendant prevails. With respect to plaintiffs' motion for summary judgment, defendant contends that there are, in any event, issues of fact pertaining to causation and damages that preclude an award of summary judgment in favor of plaintiffs. (Def.'s Resp. at 12.) Plaintiffs maintain that, regardless of the issues of fact

identified by defendant, an award of partial summary judgment in favor of plaintiffs would be appropriate to the extent that the court agrees with plaintiffs' interpretation of § 525(a) and determines that defendant's denial of the guaranties at issue violated that statute.

**Discussion**

The parties' primary disagreement centers on the interpretation of 11 U.S.C. § 525(a), which provides, in part, that

> a governmental unit may not deny ... a license, permit, charter, franchise, or other similar grant to ... [or] discriminate with respect to such a grant against ... a person that... has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act ... solely because such bankrupt or debtor ... has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act ... or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act."

11 U.S.C. § 525(a).

Plaintiffs allege that the VA's refusal to guarantee their home loans constituted the denial of an "other similar grant" under § 525(a) and thus discriminatory conduct. Defendant argues that the VA's loan guaranty program for veterans is not an "other similar grant" within the meaning of § 525(a) and that § 525(a) is therefore inapplicable to its loan guaranty program.

## A. Home Loan Guaranty Entitlements

Title III of the Servicemen's Readjustment Act of 1944, Pub. L. No. 346 (78th Cong., 2d Sess.), 58 Stat. 291, as amended, codified at 38 U.S.C. §§ 3701-33, authorizes the VA to provide housing assistance to veterans in the form of home loan guaranties when loans are extended by private lenders and, in some circumstances, direct loans. The VA's decision not to guarantee loans available from, private lenders in certain circumstances is at issue in this case.[4]

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[4] Plaintiffs emphasize that eligible veterans receive lending approval from private lending institutions and that the VA does not conduct an Independent credit assessment. Plaintiffs further mainlain ihat if a veteran meets the statutory service requirements he or she is automatically eligible for a loan guaranty. Section 3710(b), however, clearly states that

> No loan may be guaranteed under this section unless–... (2) the contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or (he construction cost bear a proper relation to the veteran's present and anticipated income and expenses; [and] (3) the veteran is a satisfactory credit risk, as determined in accordance with the credit underwriting standards established pursuant to subsection (g) of this section.

Section 3710(g) clearly indicates that, before a loan is extended that will trigger the guaranty provided by this statute, a veteran's creditworthiness is evaluated by the lender pursuant to regulations established by the Secretary. Section 3701(g)(2) provides in full:

> (2) For the purpose of determining whether a veteran meets the standards referred to in subsection (b)(3) of this section and section 3712(e)(2) of this title, the Secretary shall prescribe regulations which establish–
> (A) credit underwriting standards to be used in evaluating loans to be guaranteed under this chapter; and
> (C) standards to be used by lenders in obtaining credit information and processing loans to be guaranteed under this chapter.

Under 38 U.S.C. § 3710, certain loans to veterans made pursuant to the provisions of chapter 37 of Title 38 are "automatically guaranteed" when made for one of several enumerated purposes, including the purchase or construction of a residence to be used as a home. 38 U.S.C. § 3710(a). The amount of a guaranty available to a veteran for a particular loan is computed in accordance with a formula set forth in the statute. 38 U.S.C. § 3703(a)(l). For example, the basic entitlement for any loan of more than $56,250.00 is the lesser of 536,000 or 40% of the loan. 38 U.S.C. § 3703(a)(3)(A)(i)(III). If the VA guarantees a loan for an eligible veteran and the veteran defaults on that loan, the VA is required to reimburse the private lender for any deficiency that arises as a result of the default up to the full amount of the guaranty. Defendant then becomes subrogated to the rights of the private lender to the extent of the amount paid on the guaranty. 38 U.S.C. § 3732(a)(l). Defendant also has an "independent contractual right of indemnity" against the veteran for the amount of the guaranty paid to the lender. See Dixon v. United States, 68 F.3d 1253, 1255 (10th Or. 1995),

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Section 3701(g)(3) further provides that

> In the regulations prescribed under paragraph (2) of this subsection, the Secretary shall establish standards that include--
> (A) debt-to-income ratios to apply in the case of the veteran applying for the loan;
> (B) criteria for evaluating the reliability and stability of the income of the veteran applying for the loan; and
> (C) procedures for ascertaining the monthly income required by the veteran to meet the anticipated loan payment terms.

Accordingly, it would appear that a veteran will be automatically eligible for a guaranty only when a private lender ascertains that the veteran meets the standards of creditworthiness set out by the Secretary. The court thus rejects plaintiffs' argument that veterans' eligibility is based solely on military service and the related argument that there is a meaningful distinction between governmental units that provide funds or guaranties based on creditworthiness and those that make such guaranties based solely on a person's status as a veteran. (Pls.' Reply at 4.)

cert. denied, 517 U.S. 1167 (1996). The regulations state that "[a]ny amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. chapter 37 shall constitute a debt owing to the United States by such veteran," 38 C.F.R. § 36.4323(e).

The guaranty entitlement may be used on successive occasions, but the amount of guaranty available is statutorily limited by any benefits previously used by the veteran unless the benefit bas been restored, or qualifies for exclusion, under § 3702(b). Section 3702(b), which describes the basic entitlement, includes the following provision:

> (b) In computing the aggregate amount of guaranty or insurance housing loan entitlement available to a veteran under this chapter, the Secretary may exclude the amount of guaranty or insurance housing loan entitlement used for any guaranteed, insured, or direct loan under the following circumstances:
> (1)(A) The property which secured the loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard; and
> (B) the loan has been repaid in full, or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a toss on such loan, the toss has been paid in full....
> The Secretary may, in any case involving circumstances the Secretary deems appropriate, waive one or more of the conditions prescribed in paragraph (1).

In other words, if the VA bas sustained a loss on a previous guaranty and that loss has not been paid in full, the amount of that loss may typically not be excluded in determining the amount of guaranty entitlement available to the veteran upon a subsequent application. See Dixon, 68 F.3d at 1257 (where plaintiff argued that his loan guaranty availability under the Guaranty Program should be fully reinstated because his debt to the VA was discharged in bankruptcy, court cited 38 U.S.C. § 3702(b) for the proposition that "[a] veteran loses his eligibility to have his previously used loan guaranty entitlement restored where the VA has incurred an unreimbursed loss because of that veteran's transactions pursuant to the Guaranty Program."). As plaintiffs note, the statute does give the VA the discretion to "waive one or more of the conditions prescribed in paragraph (1)" in any case involving circumstances the Secretary deems appropriate.[5]

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[5] Plaintiffs also suggest that the words "may exclude" in § 3702(b) suggest that the Secretary "has the discretion to reduce the veteran's entitlement" by the amount of a previous loss unless the loss is repaid in full, (Pls.' Mem. at 7.) However, the phrasing of the statute, that the Secretary "may exclude" previously used amounts if certain conditions have been met, suggests a slightly different interpretation; (the Secretary has the discretion to restore an entitlement not the discretion to reduce an entitlement. In other words, the statutory language suggests an automatic reduction in entitlement based on previous use and that the Secretary may or may not restore a previously used guaranty when the delineated conditions have been met. The use of the words "may exclude" in this provision would not seem to imply the converse, i.e., permission to exclude amounts previously extended where the conditions have not been met. The cited section establishes the baseline – that previously used amounts automatically reduce the available guaranty unless the restorative conditions are met. It is the waiver provision cited by plaintiffs that authorizes a discretionary deviation from that rule.

The implementing regulations cited by plaintiff support this interpretation of the statute.

In this case, the VA took into account its unreimbursed losses when determining the amount of guaranties available to plaintiff veterans, and the statutory language indicates that the VA's decision to do so was explicitly permitted by the guaranty program. The more difficult question is whether the VA's decision violated the anti-discrimination provision of the bankruptcy code.

**B. Section 525(a): The Anti-discrimination Provision of the Bankruptcy Code**

Debtors who seek relief under 11 U.S.C. § 727 and § 1328 may obtain the discharge or release of all prepetition dischargeable debts under Chapters 7 and 13, respectively. Plaintiffs argue that, under the "fresh start" policy that underlies the bankruptcy code, in particular sections 524 and 525, they are entitled to have their debts treated as if the debts never existed. (Pls.' Resp. at 3.)

To establish a violation of § 525(a), plaintiffs must show that 1) defendant is a governmental unit, 2) defendant engaged in conduct prohibited by § 525(a), and 3) defendant

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(j) Notwithstanding the provisions of paragraph (g) of this section, the Secretary may exclude the amount of guaranty or insurance entitlement used for any guaranteed or insured loan provided:

(1) The property which served as security for the loan has been disposed of by the veteran, or has been destroyed by fire or other natural hazard; and

(2)(i) The loan has been repaid in full or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on said loan, such loss has been paid in full; ...

(k) The Secretary may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraphs (j)(i) and (j)(2)(i) of this section.

38 C.F.R. § 36.4302.

discriminated against plaintiffs solely because plaintiffs failed to pay a debt that was discharged in bankruptcy.[6] Defendant acknowledges that it is a governmental unit. Defendant denies, however, that its conduct violated § 525(a) and further maintains that its conduct was motivated, not by plaintiffs' failure to pay prepetition debts but rather by the loss the United States sustained on behalf of plaintiffs in previous dealings, as permitted by the statute and regulations governing defendant's loan guaranty program. Because the court concludes that the home loan guaranty is not an "other similar grant" within the meaning of § 525(a), the court need not address the issue of causation.[7]

**C. Home Loan Guaranty Entitlement as an "Other Similar Grant" under 525(a)**

Section § 525(a), prohibits the government from denying "a license, permit, charter, franchise, or other similar grant to ... a person that.. . has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act...." While the language "other similar grant" clearly indicates that the specifically enumerated items do not, standing alone, comprise an exhaustive list of prohibited areas of discrimination, the use of the word "similar" simultaneously circumscribes the substantive scope of the discrimination that is prohibited by the plain language of the Act.

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[6] Plaintiffs characterize this third prong of the test as the causation clement. Plaintiffs argue that defendant refused to reinstate in full their home loan guaranty entitlements solely because the plaintiffs did not repay discharged debts, and they timber maintain that defendant has failed to point to any issue of material fact on this issue. (Pls.' Reply at 5.)

[7] Plaintiffs have argued that Federal Communications Commission v. Nextwave Personal Communications, Inc., 537 U.S. 293 (2003), is of great importance to § 525 jurisprudence and to this case in particular, (Pls.' Resp. at 11). White Nextwave may be pertinent to the resolution of the causation issue, which this court need not address, there was no question in Nextwave that a governmental unit had revoked a "license," a specifically enumerated item in die text of § 525(a). Thus, Nextwave is not particularly instructive in the interpretation of the phrase "other similar grant."

**To discern whether the VA has discriminated against plaintiffs within the meaning of this Act, the court must determine whether a home loan guaranty is a grant similar to a license, permit, charter or franchise.**

In Watts v. Pennsylvania Housing Finance Co., 876 F.2d 1090, 1093 (3rd Cir. 1989), the Third Circuit opined that "the items enumerated [in § 525(a)] are in the nature of indicia of authority from a governmental unit to the authorized person to pursue some endeavor. Thus, a 'similar grant' should be given the same meaning."[8] Concluding that a loan extended by Pennsylvania's Homeowner's Emergency Mortgage Assistance Program (HEMAP) to prevent imminent mortgage foreclosure was not a "similar grant," the Watts court relied on the Second Circuit's recognition in Goldrich v. New York State Higher Education Services Corp., 771 F.2d 28, 30 (2nd Cir. 1985), that a "credit guarantee" was not a "similar grant." Id. (citing Goldrich 771 F.2d at 30 ("Although the exact scope of the items enumerated may be undefined, the fact that the list is composed solely of benefits conferred by the state that are

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[8] In a recent decision, the bankruptcy court in Maine cited Collier's elaboration on the protections of § 525(a):

> Thus, [b]eyond the area of driver"s licenses, debtors are protected from denial of continued occupancy in public housing based upon dischargeable debts for past rent, from denial of student transcripts based upon dischargeable tuition or student loan debts, from denial of participation as providers in the Medicaid or Medicare Program and from the denial of a contractor's license, a real estate license, a liquor license, a license to practice law, an insurance agent license and a casino license, if any such denial is based solely upon past or present nonpayment of a dischargeable debt. Similarly, a governmental unit cannot condition the granting of other privileges, such as the approval of permits, zoning or land use changes, upon payment of discharged debts. Collier, 525.02[2] (citations omitted).

In re Jasper, 325 B.R. 50, 54 (Bankr. D. Me. 2005).

unrelated to credit is unambiguous.").) See also Toth v. Michigan State Housing Development Authority, 136 F.3d 477, 480 (6th Cir.) ("target of § 525(a) is government's role as a gatekeeper in determining who may pursue certain livelihoods"), cert. denied, 524 U.S. 954 (1998).[9]

Plaintiffs are clearly correct that the Goldrich court's specific holding that the denial of student loan guaranties did not constitute actionable discrimination under § 525 was later abrogated by Congress's decision to amend § 525 by adding § 525(c), specifically pertaining to student loans, in the Bankruptcy Reform Act of 1994.[10] Plaintiffs are also

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[9] But see Matter of Rose, 23 B.R. 662, 666-67 (Bankr. D. Conn. 1982) (relying on other courts' decisions that government contracts, public housing, liquor licenses, college transcripts, and student loans come within the purview of § 525(a) and She legislative history of the statute to conclude that § 525(a) also applies to mortgage financing offered by a state government).

[10] Section 525(c) provides:

> (c)(l) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a grant, loan, loan guaranty, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.
>
> (2) In this section, "student loan program" means the program operated under part B, D, or E of title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.

correct that the Watts court relied on Goldrich's reasoning prior to that abrogation.[11] Congress's decision to amend section 525 by adding § 525(c) does not necessarily alter the essential correctness of the analysis of the plain language of § 525(a) offered by the Second and Third Circuits in Goldrich and Watts. Indeed, that analysis has been adopted or noted with approval by other courts, including the Fourth Circuit, since the 1994 amendment of section 525. In 1998, the Sixth Circuit opined that

> [t]he items enumerated in [§ 525(a)] – licenses, permits, charters, and franchises -are benefits conferred by government that are unrelated to the extension of credit. They reveal that the target of § 525(a) is government's role as a gatekeeper in determining who may pursue certain livelihoods. It is directed at governmental entities that might be inclined to discriminate against former bankruptcy debtors in a manner that frustrates the "fresh start" policy of the Bankruptcy Code, by denying them permission to pursue certain occupations or endeavors. The intent of Congress incorporated into the plain language of § 525(a) should not be transformed by employing an expansive understanding of the "fresh start" policy to insulate a debtor from all adverse consequences of a bankruptcy filing or discharge.

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Plaintiffs assert that this amendment was made in response to Goldrich which held that section § 525(a) did not apply to extensions of credit or loan guaranties.

[11] See also In re Cleasby, 139 B.R. 897, 899-901 (W.D. Wis. 1992), and Lee v. Yeutter, 106 B,R. 588, 592 (D. Minn. 1989), aff'd 917 F.2d 1104 (8th Cir. 1990), two other pre-1994 cases relying on Goldrich reasoning.

Toth, 136 F.3d at 480 (holding that extensions of credit do not come within the reach of § 525(a)). See also In re Bryant No. 96-1161, 1997 WL 633256 (4th Cir. Oct. 14, 1997) (relying explicitly on Goldrich and In re Cleasby, 139 B.R. 897, 899-901 (W.D. Wis. 1992); "because the determination of whether to extend credit is not an application for a "license, permit, charter, franchise, or other similar grant," the [Farmers' Home Administration's] consideration of the Bryants' ability to repay the loan for which they had applied and their past credit history docs not implicate 11 U.S.C.A. § 525(a)); Bentley v. Glickman, 234 B.R. 12, 20 (N.D.N.Y. 1999) (relying on Goldrich's conclusions that "a loan or other form of credit guarantee was not 'a license, permit, charter, franchise, or other similar grant' and that § 525 did not therefore provide protection against consideration of debtor status in credit arrangements" and noting that "[a]lthough § 525 was amended in the interim between Goldrich and the present action, § 525(a) remains the same in all material respects."); Baumgartner v. United States Dep't of Agriculture, No. 2:97-CV-34, 1998 WL 278255 (W.D. Mich. Feb. 17, 1998) (relying on Toth to hold that denial of loan application was not discriminatory violation of § 525(a)); In re Jasper, 325 B.R. 50, 53 (Bankr. D. Me. 2005) (holding that federal credit union's extension of credit union privileges, including check cashing privileges, ATM transactions, and online banking, is not "a license, permit, charter, franchise or other similar grant). Compare In re Exquisito Services, Inc., 823 F.2d 151, 154 (5th Cir. 1987) (the § 8(a) program, pursuant to which the SBA contracted with the Air Force to provide services and under which the SBA subsequently determined that the debtor would have the exclusive right to perform those services according to the terms and for the length of that contract with assistance from the SBA, is "essentially a franchise as defined in Black's Law Dictionary and, as such, is included within the scope of 11 U.S.C. § 525(a)); In re General Development Corp., 163 B.R. 216, 220 (S.D. Fla. 1994) (finding the approval of a

platting or replatting action most analogous to cases dealing with the granting of liquor or business licenses and thus within the purview of "other similar grants" under § 525(a)).

Aside from the fact that courts have continued to rely on Goldrich's reasoning after the amendment of § 525, the narrow manner in which Congress chose to amend § 525 also persuades this court that § 525(a) does not and should not apply to extensions of credit or home loan guaranties offered by the federal government. In other words, if interested in abrogating the reasoning of Goldrich, as opposed to its outcome, Congress could have amended § 525(a) itself to prohibit discrimination based on the extension of credit, loans or loan guaranties. Congress may also have chosen to write § 525(c) more broadly, extending that provision to any loan or guaranty offered by the government, as opposed to limiting that section to student loan programs. The court is reluctant to construe § 525(a) in a broader manner than its plain language would appear to support.

In a further attempt to discredit the reasoning relied upon in Goldrich,[12] plaintiffs offer In re Stoltz, 315 F.3d 80, 86 n.2 (2nd Cir. 2002), as an example of a case in which the Second Circuit criticized its own reasoning in Goldrich. (Pls.' Resp. at 14.) The holding in Stoltz, however, ultimately rested on that court's conclusion that a public housing lease was a "grant" similar in nature to the

[12] In yet another argument, plaintiffs contend that the Second Circuit's holding in Goldrich that a "credit guaranty" is not "similar to a "license, permit, charter or franchise" was "overturned by statute." (Pls.' Resp. at 14.) "If the statutory amendment left any questions," plaintiffs continue, "Nextwave clearly abrogated Goldrich." (Id.) As noted previously, however. Nextwave involved an actual license extended by the FCC and thus the Nextwave decision is not relevant to the cited portion of the Goldrich decision nor is it relevant to this court's consideration of whether a home loan guaranty is similar to a license or franchise or other specifically enumerated item in § 525(a).

enumerated items in § 525(a), i.e., a "property interest[]... unobtainable from the private sector and essential to a debtor's fresh start." Id. at 90.[13] The Stoltz court specifically noted that the withholding of a real estate license, a state university transcript, or a driver's license, each unobtainable from the private sector, would jeopardize a debtor's ability to practice a chosen profession, apply for work or further schooling, or commute to work or school, respectively, and would thus impede a debtor's ability to obtain the fresh start intended by the code. Id. Likewise, the court explained, the revocation of a public housing lease, resulting in the eviction of a debtor-tenant, would be likely to cause homelessness, "a status not conducive to economic survival" and necessarily inimical to the fresh start envisioned by the bankruptcy code. Id. The guaranty of a home loan is simply not a "grant" in the way a public housing lease may be considered a grant, i.e., a "transfer of property by deed or writing," Id. at 89, nor is it a "a property interest[]... unobtainable from the private sector and essential to a debtor's fresh start," Id. at 90. Owning one's own home, while desirable and possibly preferable from an investment standpoint, is simply not essential to a "fresh start" in the way that the basic need for shelter and avoidance of homelessness discussed in Stoltz is essential to a "fresh start." Accepting the reasoning of the Stoltz opinion merely for the sake of argument, this court must conclude that its reasoning is not dispositive of the case before it based simply on the dissimilarity between a public housing lease, as described by that court, and the type of home loan guaranty at issue here.

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[13] Compare In re Jasper, 325 B.R, at 55 (because check cashing privileges, ATM transactions, online banking, minimum account balances, and the like are widely available, federal credit union's revocation of those privileges based on loss occasioned by plaintiffs docs not impair plaintiffs' fresh start despite the possibility that plaintiffs may pay slightly more for banking services as a result: "it should come as no surprise that bankruptcy can bring on some adverse consequences").

Plaintiffs further encourage this court to rely on the legislative history of § 525 to construe that section broadly to prohibit discrimination based on debts discharged in bankruptcy. This court cannot, however, ignore or pass over the plain language of a statute and reach for the legislative history in order to accord that language broader meaning than the language itself supports. See U.S. v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242-43 (1989) ("The plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'" (citing Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982)); In re Stoltz, 315 F.3d at 89 ("[W]e begin [statutory interpretation] with the understanding that Congress says in a statute what it means and means in a statute what it says." (citing Hartford Underwriters Ins. Co. v. Union Planters Bank, 530 U.S. 1, 6... (2000)); In re Exquisito Services Inc., 823 F.2d at 153 (acknowledging that some courts have relied on legislative history of § 525 to construe the statute broadly but recognizing that "[t]he better approach is taken by other courts that have focused on the specific language of the section, and have read the legislative history more narrowly. Those following this approach tend to limit the application of § 525 only to situations analogous to those enumerated in the statute."); B.N. Realty Assoc. v. Lichtenstein, 238 B.R. 249, 254 (S.D.N.Y. 1999) ("There is little question that the 'plain meaning rule' governs interpretation of the Bankruptcy Code. '[T]he Supreme Court has consistently decided bankruptcy cases following a textualist approach for statutory interpretation, more commonly known as the plain meaning rule[,]... which presumes the intent of Congress is captured in the language of the statute and that the sole function of the courts is to enforce it according to its terms.'" (citation omitted)).

Plaintiffs suggest that extensions of credit are distinguishable from guaranties of loans and that Toth, Watts and Cleasby are thus inapposite. Plaintiffs assert that defendant is not providing home loan guaranties based on the creditworthiness of the veteran applicants in this context, and that cases pertaining to the extension of credit and associated analyses of creditworthiness are irrelevant. While creditworthiness does not appear to be "irrelevant" under the statutory scheme, see n.4 *supra,* it does not appear to have been a factor in the decisions made by the VA in the cases before the court. However, from an analytical perspective, the extension of a home loan guaranty has financial consequences for the guarantor that are not dissimilar to consequences often faced by those who extend credit. Guaranteeing a loan and extending credit are more similar to each other analytically than either of those are to the extension or issuance of a franchise, license, or permit. Thus, the reasoning in Toth and Watts is applicable here.

Because the court agrees with defendant that the plain language of section § 525(a) as well as a reading of section § 525 in its entirety indicate that a home loan guaranty is not an "other similar grant" within the meaning of the statute, the court concludes that plaintiffs have failed to state claims upon which relief can be granted.

**Conclusion**

For the foregoing reasons, plaintiffs' motion for partial summary judgment is DENIED, defendant's motion to dismiss is ALLOWED, and this case is DISMISSED.

This 5 October 2005.

/s/
W. Earl Britt
Senior United States District Judge